REMARKS

Reconsideration and allowance of the present application are respectfully requested. Claims 1-20 are pending in this application. Claim 1 is an independent claim. No new matter has been added.

Priority

All certified copies of the priority documents have been received.

Rejection under 35 U.S.C. § 102

Claims 1-7 and 10-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated Sabol et al. (US 2004/0122719), hereinafter "Sabol." This rejection is respectfully traversed.

Claim 1

Claim 1 requires, *inter alia*, evaluating "data with the aid of the test criteria and determining the degree of compliance with the performance specification." At least this feature is not disclosed or suggested by Sabol.

A. Discussion of Sabol

Sabol discloses a medical resource processing system. The system may provide material to a patient such as "structured video and/or audio recordings of questions and answers." Paragraph [0332] of Sabol. The material provided is for the patient. Resources that can be processed include reference sources which represent information about "medical events, medical conditions, disease state," and financial information. As recited in paragraph [0052] of Sabol,

The data resources do not, in general, require information to be gathered directly from the patient. Rather, <u>these resources are more general in nature</u> and may be obtained through data reference libraries, subscriptions, and so forth. (emphasis added).

Thus, the data of Sabol represents general medical knowledge rather than a set of rules and performance specifications.

To maintain the validity and quality of such data, the validation and data management module 324 may carry out specific functions, typically bi-directionally, as indicated in FIG. 22. Such functions may include those of the reconciliation modules as indicated at reference numeral 326, which can reconcile or validate certain data, such as <u>based upon time of entry, source of the data</u>, or any other validating criteria. Where such reconciliation or validation is not available, such as due to conflicting updates or inputs, such matters may be flagged to a user for reconciliation. (emphasis added).

Paragraph [0352] of Sabol.

B. Distinctions over Sabol

1. "Degree of Compliance"

The Examiner relies on the "structured video and/or audio recordings of questions and answers" to teach the "degree of compliance," of claim 1. <u>Yet, no reference is made of any of these recordings for determining a degree of compliance with a performance specification.</u>

In the Examiner's response to Applicants' arguments on page 10 of the Office Action, the Examiner states that paragraph [0019] of Applicants' Summary provides that a degree of compliance <u>may lead to</u> a simple Yes/No decision. (emphasis added). In other words, a Yes/No decision may be made after determining a degree of compliance. <u>The degree of compliance cannot be interpreted as a simple Yes/No decision, as the Examiner has characterized the "degree of compliance."</u>

The Examiner points to paragraph [0289] of Sabol to support his contention that Sabol teaches the "degree of compliance." Relevant portions of paragraph [0289] are provided below for the Examiner's convenience.

The logic engine essentially contains the rules that coordinate the various functions carried out by the system. Such coordination includes accessing and storing data in the knowledge base, as well as execution of various computer-assisted data operating algorithms, such as for feature detection, diagnosis, acquisition, processing and decision-support. The logic engine can be rule-based, and may include a supervised learning or unsupervised learning system.

Nowhere in the above-recited paragraph does Sabol disclose a degree of compliance. The decision-support of Sabol does not disclose or suggest being a degree of compliance. The decision support can be any one of numerous factors which isnot a "degree of compliance."

2. "Evaluating ... the Data with the Aid of the Test Criteria."

The Examiner relies on paragraph [0332] to teach the "evaluating" of claim 1. However, Sabol does not describe any evaluation of data on a test system with the aid of test criteria correlated with performance specification.

More specifically, Sabol makes reference to a "validation or data management system" to "control access to and quality of data within the local knowledge base." Paragraph [0352] of Sabol. The criteria disclosed for the validation are "time of entry" and "source of data."

However, the "evaluating," of claim 1, is based on data correlated with a medical working practice and test criteria correlated with a performance specification. By contrast, Sabol bases the validation on "time of entry" and "source of data." Additionally, Sabol only states in paragraph [0352] that in case of validation problems, "such matters may be flagged to a user." A simple flagging of data is different from a quantitative assessment of compliance.

Therefore, Sabol fails to disclose or suggest the evaluating "data with the aid of the test criteria and determining the degree of compliance with the performance specification," as set forth in claim 1.

Claims 2-7 and 10-20 are patentable at least by virtue of their dependency on claim 1. Moreover, Applicants provide the following additional arguments for claim 7.

Claim 7

On page 5 of the Office Action, the Examiner admits that Sabol "does not expressly teach the specific data recited," in claim 7. Nonetheless, the Examiner asserts the following:

> These differences are only found in the non-functional descriptive material and are not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate.

Applicants disagree for the following reasons. In creating a repetition request, new data is generated and is broadcasted to some other entity able to receive such a request. Furthermore, rejection and repetition of data not complying with the performance specification extends the method to be iterative. In other words, the medical working practice will be repeated until compliance with the performance specification is met. This alters the nature of the recorded and stored data.

Thus, the steps are performed based on the data and the data is functional.

For at least the foregoing reasons, Applicants request that the Examiner withdraw the rejection of claims 1-7 and 10-20 under 35 U.S.C. § 102.

Rejection under 35 U.S.C. § 103

Claims 8-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sabol in view of Miller et al. (US 5,446,653), hereinafter "Miller." This rejection is respectfully traversed.

The Examiner correctly acknowledges that the features of claims 8-9 are not disclosed or suggested by Sabol. However, the Examiner alleges that these features are taught by Miller. Even if Miller taught the features of claims 8-9 (which Applicants do not admit) and that Miller could be properly combined with Sabol (which Applicants do not admit), Miller fails to cure the deficiencies of Sabol as described above with reference to claim 1. Therefore, Sabol and Miller fail to render claims 8-9 obvious.

For at least the foregoing reasons, Applicants respectfully request that the Examiner withdraw the rejection of claims 8-9 under 35 U.S.C. § 103.

CONCLUSION

Accordingly, in view of the above remarks, reconsideration of the objections and rejections and allowance of each of claims 1-20 in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Donald J. Daley at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

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